



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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**OCT 05 2006**

Robert Arnold  
Division Administrator  
Federal Highway Administration  
Leo W. O'Brien Federal Building  
Clinton Avenue and N. Pearl Street  
Albany, New York 12207

Dear Mr. Arnold:

The Environmental Protection Agency (EPA) has reviewed the draft environmental impact statement (draft EIS) for the Williamsville Toll Barrier Improvement Project, located in Erie and Genesee Counties, New York (CEQ #20060218). This review was conducted in accordance with Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609, PL 91-604 12(a), 84 Stat. 1709), and the National Environmental Policy Act.

The purpose of the project is to improve traffic conditions, reduce delays and congestion, and address safety deficiencies by developing a modern mainline toll barrier. The draft EIS examined developing a modern toll barrier, which meets a specific set of design standards, and either replacing the existing structure in the current location or within an 18 mile corridor of Route 90 from Exit 50 to Exit 48A, Mileposts 419 to 402. In addition to arriving at a preferred toll plaza configuration, the draft EIS also offered three location alternatives, at Mileposts 404-405, 408-409, and 410 for full evaluation. Milepost 408-409 was identified as the preferred alternative.

Our first and foremost concern is with the siting study and the numbered weighting system that was used to screen and select alternatives and also with the selected alternatives themselves. While most of the categories for alternatives selection are appropriate, we do not agree that the numbered weighting system found in the draft EIS and in Appendix D was the appropriate measurement tool to evaluate and screen the alternatives. As an example, we have serious concerns with giving such categories as Air and Noise a weighting factor ten times greater than other resource considerations. With the exception of the 8-hour ozone standard, this area is attainment for all criteria air pollutants and according to the air analysis section of the EIS the emissions from vehicles on the road will actually decrease, due to the projects purpose of relieving congestion by offering dedicated e-z pass lanes and reducing queuing times. Since the surrounding area will experience an improvement in air quality and it is not anticipated that any violation of the air standard will occur, there would be no reason to include air quality as such a highly weighted factor for alternative screening. In fact, we understand that this criterion is actually related to proximity of homes to the roadway and not an actual measurement of impact. For this particular criterion, the scoring should reflect whether a residence or

important resource experiences an increase in either noise or air pollution that would exceed the Federal Highway Administration's (FHWA's) noise threshold or the air quality standards. Since the draft EIS demonstrates that the air quality is already not a problem and would improve with the project, no matter the location, what remains is the potential to increase the noise level. Even if there may be an increase in noise without identifying how many residences are affected and the noise level increase we do not agree that a 10 fold weighting factor is warranted especially considering the relative ease with which noise increases can be mitigated.

Even among similarly weighted criteria, such as those found in Level 2, we are concerned with the inability of the scoring system to provide for an equal evaluation of alternatives. For example, an alternative that would impact 8.1 acres of agricultural land receives a 300 point score since it is the alternative that impacts the most farmland. Similarly, an alternative that could affect 26 acres of wetlands also receives 300 points. We view the 26 acre impact to wetlands as far more significant than the 8.1 acres of farmland given not only the three to one ratio of loss of the wetlands over farmland but also the context of the wetlands in this area, which are under pressures from agricultural use and development. The impacts to wetlands are significant both in terms of context and intensity, whereas, the impacts to farmlands are less so, yet both receive the same score.

Additionally, many of the Milepost locations received 300 points for the potential to preclude a future interchange. Though that is worthy of identification, we cannot agree that this criteria can be weighted equally with the others. Many of these locations do not have plans for an interchange and as such we would propose that precluding the location of the needed toll barrier now due to the future possibility for an interchange would be inappropriate and that this criterion should be eliminated. Therefore, it is our opinion that the weighting system does not accurately indicate the significance of the impact nor put the level of impact into a context for proper evaluation to screen alternatives. We recommend that the raw data be utilized to properly indicate the significance of the impact.

These concerns also call into question the selection of the three alternatives that are fully evaluated in the draft EIS. The selection of the three road segments for detailed analysis appears to be rather subjective and arbitrary. While total combined scores ranged from 2,470 to 17,490, only segments with scores under 3,000 were chosen for further study with no explanation as to why only those were chosen. Sites 414, 413, 411, 407, and 403 scored under 4,000 but were removed from consideration. Though the three alternatives are worthy of examination, we believe that there are other alternatives that are worthy as well. Upon looking at the raw data found in the siting study in Appendix D, several other milepost locations appear to be on par with the others for further analysis. As was communicated to you in a memorandum from the U.S. Army Corps of Engineers on behalf of the resources agencies, we believe that locations along Mileposts 414 and 413 are very worthy of examination and that although Mileposts 407 and 406 have challenges, these issues are not sufficient to eliminate them at this time and should be examined to determine what can be done to minimize and/or mitigate their particular flaws.

Overall, the site selection and evaluation methodology employed for the draft EIS does not appear to satisfy the alternatives analysis requirements of the Section 404(b)(1) guidelines. Regarding the three alternatives that were fully evaluated in the draft EIS, we are concerned that the preferred alternative of Milepost 408-409 is the alternative that impacts the most wetlands. The wetlands in this area are highly functioning with many of the locations within the right of way being a part of a larger wetland complex. Alternative 408-409 not only impacts the greatest amount of wetland acreage, but also impacts the greatest amount of forested wetlands. Forested wetlands are becoming rarer in New York State and are very difficult to replace. Mitigation proposals to replace lost forested wetlands often require long term management and monitoring and frequently, even with oversight, never come to fruition. With that in mind and with the fact that there are other alternatives, notably alternative Milepost 410, that have fewer impacts to wetlands, we do not believe that Milepost 408-409 could be considered the Least Environmentally Damaging Preferred Alternative (LEDPA) according to Section 404 of the CWA and, therefore, would be ineligible for a CWA §404 permit. We have requested that further evaluation of Milepost 410 be done to determine if additional avoidance and minimization of impacts to wetlands can be achieved. Also, as we have stated before, we believe that there are other alternatives that are deserving of evaluation that have even fewer impacts to wetlands than the ones fully analyzed in the draft EIS. Nonetheless, we found that the mitigation proposal in the draft EIS and Appendix J is insufficient to determine that there will be no net loss of wetland resources with the implementation of any of the alternatives.

In addition, we found that the discussion of the impacts from stormwater runoff and mitigation for those impacts was also insufficient. The draft EIS did not supply enough information to allow us to come to the same conclusion that, even with a new location and the corresponding increase in pavement and vehicle numbers and the reduction of wetlands within the right of way, there would be no impacts to surface water quality. The draft EIS seems to contradict itself in this section on surface and ground water quality, since it discusses the mitigation that may be needed, and the intrusion of chloride into groundwater in the Milepost 408-409 section, which would need to be addressed. The mitigation proposal to manage road runoff will also need further detail than what was provided.

We also have concerns regarding the draft EIS's cumulative impacts analysis. The cumulative effects analysis was too limited and only discussed other projects near the proposed project locations. The cumulative effects analysis should have, for example, discussed other past, present and reasonably foreseeable projects and impacts to wetlands and other waters of the U.S., historic properties and archeological resources, and prime farmlands, which would be of critical importance to this area.

In summary, EPA has rated the draft EIS as EC-2 (Environmental Concerns-Insufficient Information). Given that we disagree with the alternatives screening system and strongly recommend that other alternatives, which were discarded, be evaluated equally alongside both the no build and the draft EIS examined alternatives, a Supplemental EIS would be the correct course of action to remedy our concerns and provide that analysis. We also

have environmental concerns with the impacts to wetlands and water quality and we recommend that the FHWA and New York State Department of Transportation (NYSDOT) develop a much more comprehensive mitigation proposal than what appears in the Draft EIS and Appendix J and use this opportunity to expand the cumulative effects analysis. We are encouraged that in the last two months we have met twice with NYSDOT and FHWA to discuss these issues and the other alternatives. We look forward to future meetings to discuss these other alternatives and their respective impacts:

We are available to meet with you and your staff to discuss our outstanding concerns about this project. If you have any questions concerning our comments, or would like to schedule the aforementioned meeting, please contact David Carlson of my staff at (212) 637-3502 or Grace Musumeci at (212) 637-3738. Thank you for the opportunity to comment on this draft EIS.

Sincerely yours,



John Filippelli, Chief  
Strategic Planning and Multi-Media Programs Branch

cc: S. Schlueter, USACE-NYD  
T. Sullivan, F&WS  
S. Doleski, NYSDEC